

The Law Firm Liability Landscape

COURSE MATERIALS

Presented by the
American Bar Association
Standing Committee on Lawyers' Professional Liability



American Bar Association
ABACLE
321 North Clark Street, Suite 2000
Chicago, IL 60654-7598
www.americanbar.org
800.285.2221

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The Law Firm Liability Landscape

Wednesday, July 29, 2026 | 1:00 pm Eastern

Sponsored by the ABA Standing Committee on Lawyers' Professional Liability

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Speakers

Heather Rosing

Founding Partner

Rosing Pott & Strohbehn, LLP

Kevin Flynn

Vice President – Programs

Huntersure LLC

Andrew Ricke [Moderator]

Vice President – Loss Prevention Counsel

Lockton



Learning Objectives

- Identify the most prevalent and severe causes of claims against lawyers and law firms.
- Identify the factors and circumstances which are most likely to lead to ethics violations and claims against lawyers and firms.
- Understand lawyers' related duties under the Model Rules of Professional Conduct (e.g., Rules 1.1 (competence), 1.2(a) (scope of representation), 1.2(d) (counseling or assisting a client's crime or fraud), 1.3 (diligence), 1.4 (communication), and 1.7-1.10 (conflicts of interest)).
- How to avoid common ethics violations and claims through the implementation of risk management strategies and best practices.



Legal Malpractice Insights

Emerging Data and Trends

Historical Trends: The Big Picture

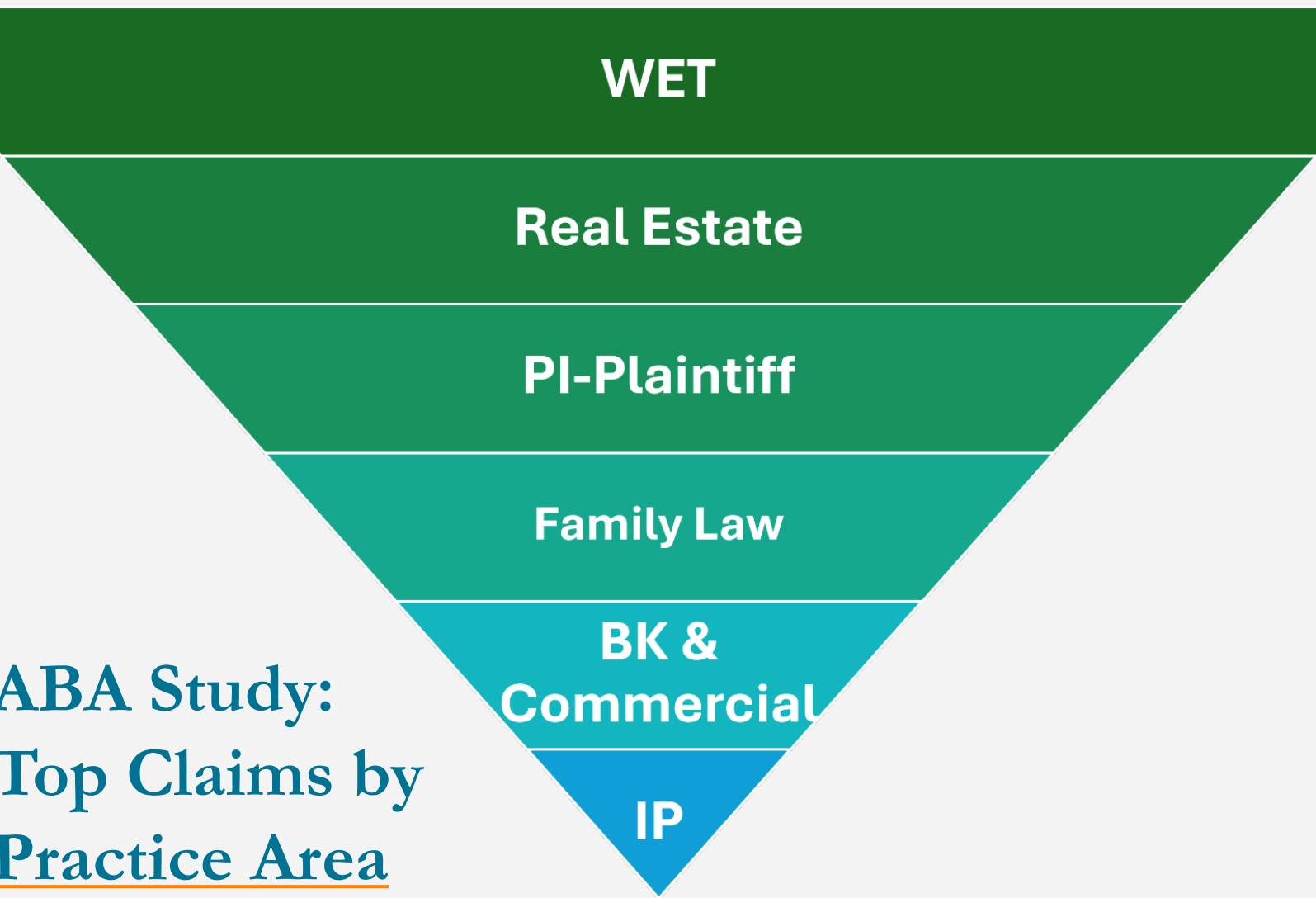
- Claim frequency
- Leading causes of loss
- Claim severity
- Time and cost of resolution



American Bar Association

Profile of Legal Malpractice Claims (2020-2023)





WET

Real Estate

PI-Plaintiff

Family Law

**BK &
Commercial**

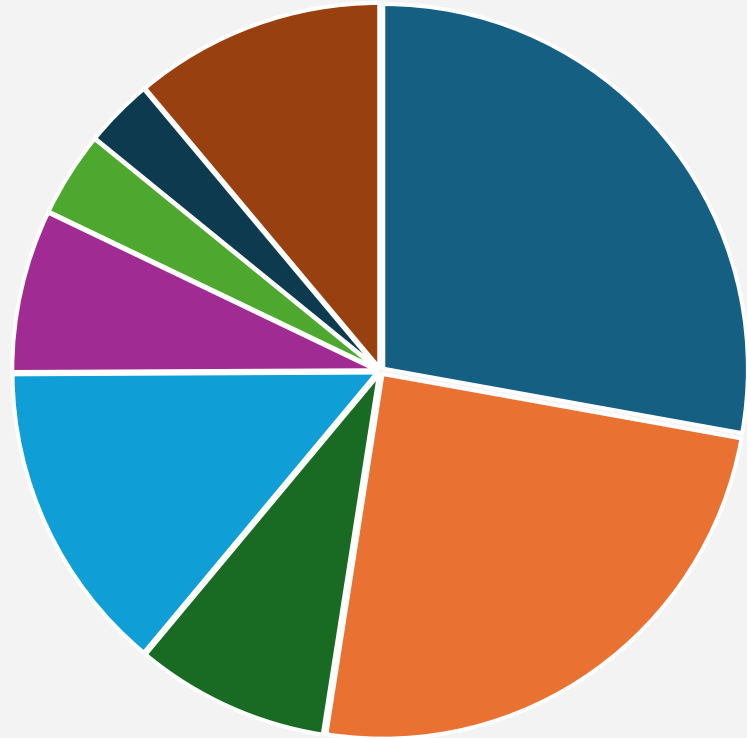
IP

**ABA Study:
Top Claims by
Practice Area**

ABA Study: Claims by Number of Firm Attorneys

of Attorneys vs % of Claims

■ 1:	27.83%
■ 2 to 5:	24.64%
■ 6 to 10:	8.59%
■ 11 to 39:	13.87%
■ 40 to 99:	7.19%
■ 100 to 199:	3.76%
■ 200 to 499:	3.03%
■ 500+:	11.10%



ABA Study: Number of Claims By Activity

Preparation, Filing Transmitting
Documents – 35.65%

Commencement of
Action/Proceeding – 18.90%

Advice – 13.25%

Settlement/Negotiation – 11.04%

ABA Study: Number of Claims by Alleged Error

- Substantive Errors - 51.01%
- Administrative Errors - 22.87%
- Client Relations - 17.26%
- Intentional Wrongs - 8.85%



ABA Study: Top Six Substantive Errors

- 1) **Failure to Know/Properly Apply the Law**
- 2) **Drafting Errors**
- 3) **COI**
- 4) **Inadequate Discovery/Investigation**
- 5) **Planning Error-Procedural Choice**
- 6) **Failure to Know/Ascertain Deadline**



ABA Study: Top Six Administrative Errors

- 1) **Failure to Calendar Properly**
- 2) **Clerical Error**
- 3) **Failure to React to Calendar**
- 4) **Failure to File Document – No Deadline**
- 5) **Procrastination in Performance – No Follow Up**
- 6) **Lost File, Document or Evidence**



ABA Study: Client Relations Errors

Failure to Follow
Clients'
Instruction

Failure to
Obtain Consent
or Inform Client

Improper
Withdrawal

ABA Study: Intentional Wrongs Claims

- Fraud
- Malicious Prosecution / Abuse of Process
- Libel or Slander
- Violation of Civil Rights





Large Law Firms

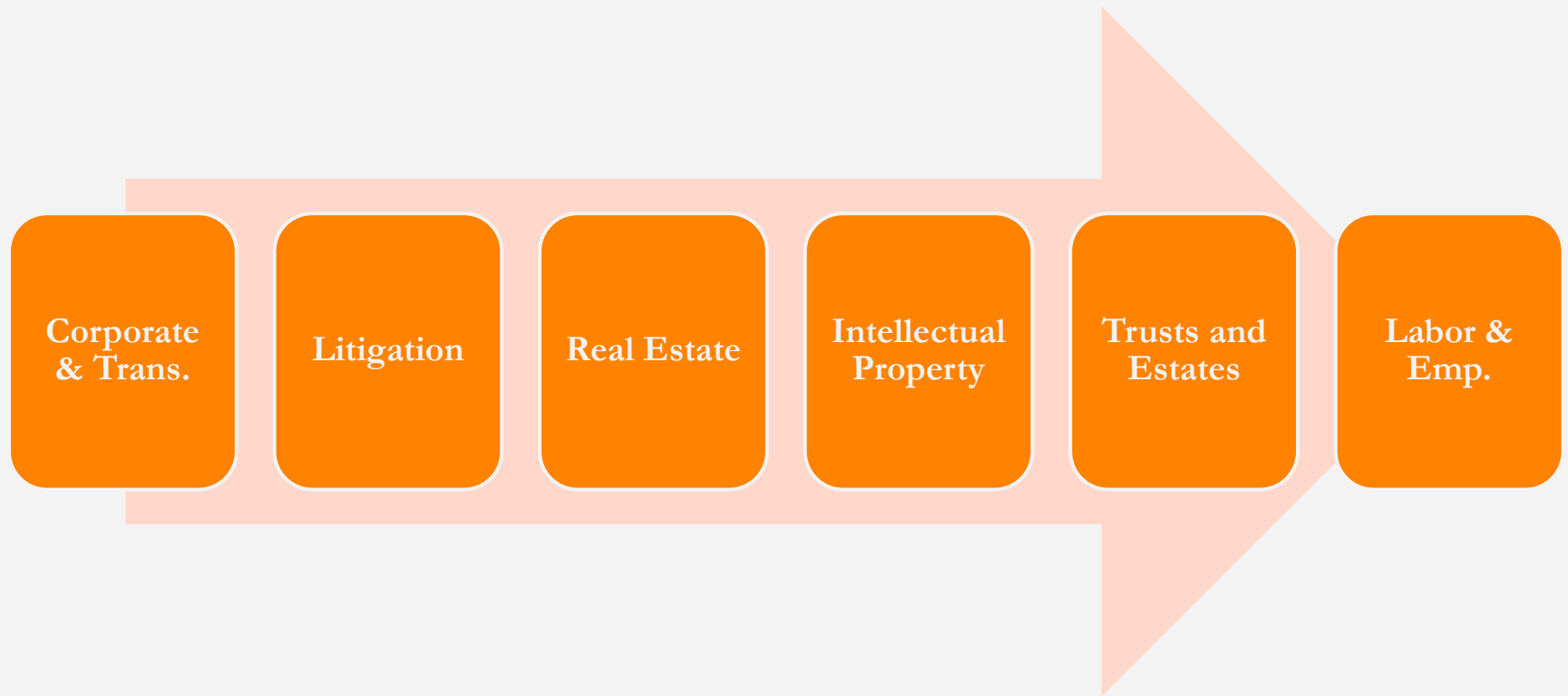
Claims Data & Experience

Large Law Firms: Claim Frequency Trends

- ❖ 2010-2018 → increased claim rates
 - 2015: 1.46% per 100 lawyers (all-time high).
- ❖ 2018-2022 → steady decrease
 - 2022: .96% (lowest)
- ❖ 2023-2024: slight increase but still 1% or lower

Large Law Firms:

Claims Frequency by Practice Areas



Large Firms: Leading Causes of Loss



1. Error – drafting
2. Conflicts of interest
3. Fraud and misrepresentation
4. Unworthy clients
5. Error – planning / procedural choice
6. Breach of fiduciary or other duty
7. Error – failure to know / ascertain deadline

Large Law Firms: Claim Severity

❖ **Loss Data (last 15 years):**

- 81.4% of claims/circumstances → no loss
- 14.3% → less than \$1M
- 4.3% → more than \$1M (2.32% > \$2.5M)

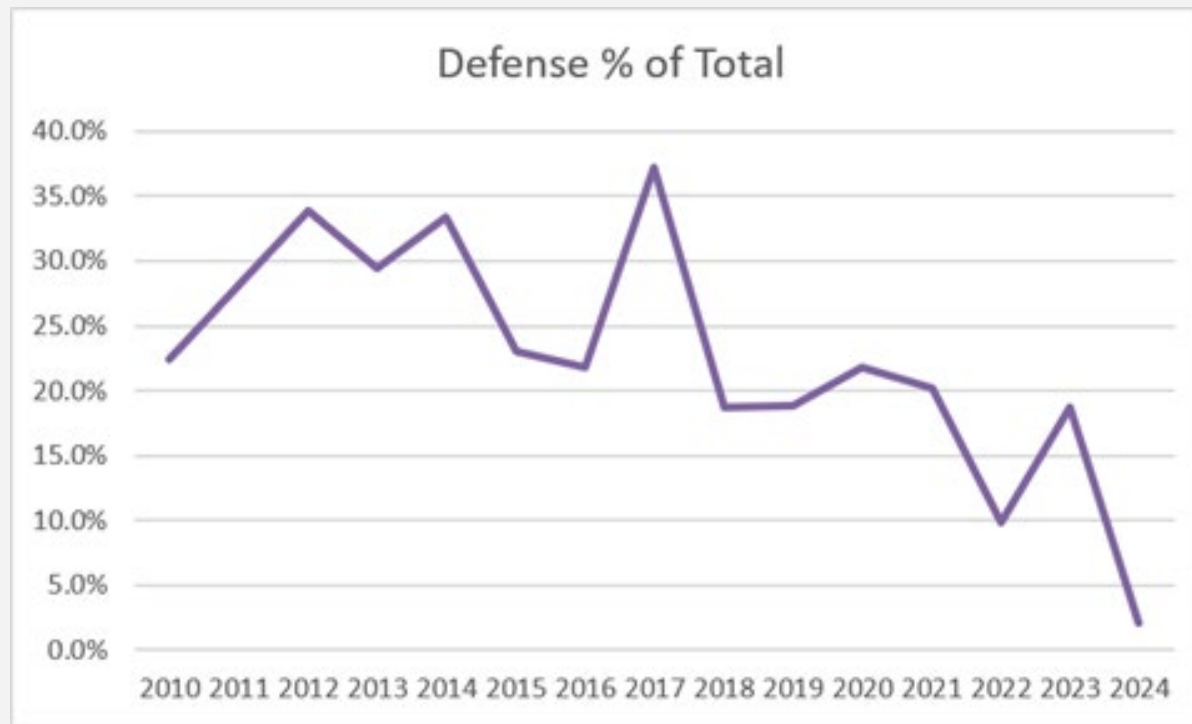
❖ **Catastrophic claims:**

- Claims exceeding \$50M and \$100M increased over the last decade.
- Approx. 72% of \$20M+ payouts = firms with 250+ attorneys.

❖ **AOP:** securities and corporate practices historically are most severe.

Large Law Firms: Defense Spending

Defense costs as % of total insurer spend on closed/concluded claims (2010-14)





Trends in LPL Claims

Diving into the Numbers

Practice Area – Trend Comparisons

ABA Study:

- Litigation and corporate/transactional → not in the top 4
- Estates, trusts, and Probate → top spot; rising claims
- Increase in IP
- Decrease in criminal, PI plaintiff, and family law

Large law firms:

- Litigation and corporate/transactional nearly equal
- Corporate/transactional → increasing claims

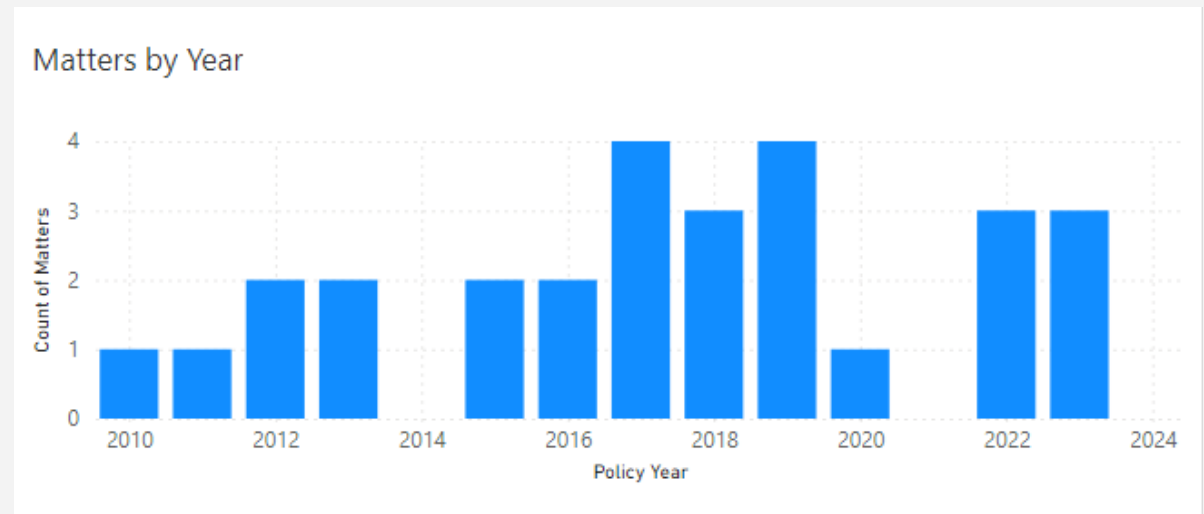
Frequency & Severity Observations

ABA Study:

- Downward trajectory in claim frequency and severity
- Increase in % of \$0 to \$10k paid
- Payouts over \$2M: drop from 105 (2019) to 29 (2023)

Large Law Firm Data:

- Decrease in claim frequency
- Increase in severe claims (>\$50M)



Catastrophic Claims

85 payouts > \$20M

- Average: ~ \$47M
- Median: ~ \$35M
- Largest: \$390M (2020 settlement)

No firm size is immune:

- 1-100 lawyers → 14 (~16%)
- 101-250 → 10 (12%)
- 251-500 → 28 (33%)
- 501-1000 → 16 (19%)
- 1001-1500 → 1 (1%)
- 1501+ → 17 (20%)



Other Notable Trends & Impacts

- ❖ Settlement > trial payouts
- ❖ Shortening time to resolve claims
- ❖ Claim-driving factors
 - “Nuclear verdicts” & social inflation
 - Litigation funding
 - Insurance
 - Modern lawyer-client relationships (less loyalty)
- ❖ Technology / AI impacts



SPOTLIGHT: CAUSES OF LOSS

**Frequent, High Risk & Emerging
Problem Areas**

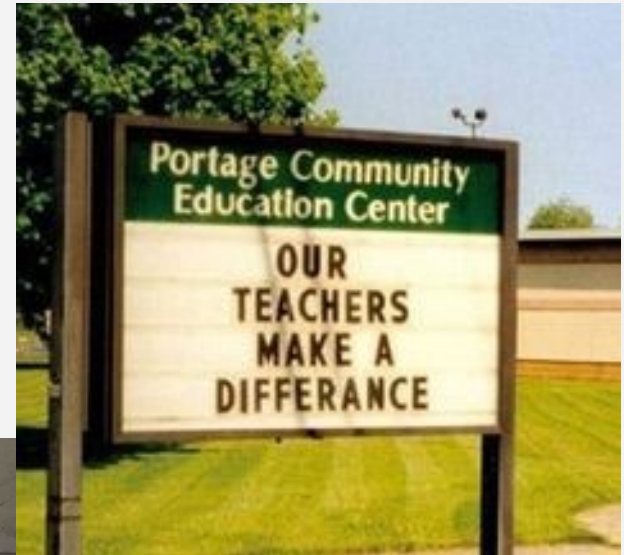
Mistakes: Everyone's Problem

Historically:

- #1 reported circumstance ($> 50\%$)
- #1 cause of loss
- All firm sizes

Common Examples:

- Drafting errors
- Missed deadlines
- Hasty responses
- Dabbling



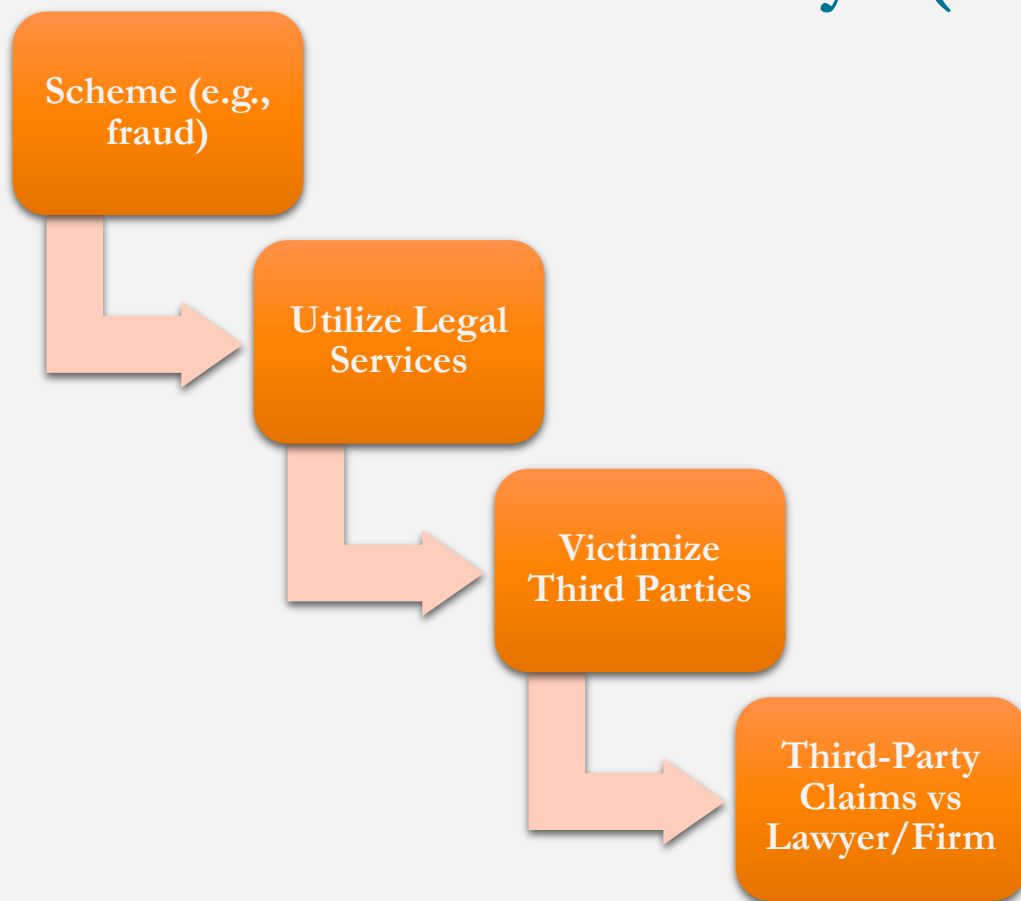
Suits for Fees: Risky Business

Fees
disputes

Malpractice
claim



“Unworthy” (Dishonest) Clients



Unworthy Clients: Nuclear Threats

85

**Settlements or
Verdicts Paid by
Law Firms
Exceeding \$20M**

Publicly reported settlements by, or verdicts against, U.S. law firms exceeding \$20M.

65%

**Attributable to
Unworthy Client
Representations**

Of the 85 catastrophic outcomes, 56 (66%) were attributable in whole (40) or in part (16) to the representation of an unworthy client.

\$390 Million

**Largest Reported
Payout**

The largest reported settlement of a dishonest client claim.

Conflicts of Interest

Liability claims → legal malpractice, breach of fiduciary duty

Potential consequences:

- Suit for damages
- Disgorgement of fees
- Added “heat” in a malpractice suit
- DQ motions
- Discipline

High risk scenarios:

- 1) Joint representations
- 2) Accidental/unintended or impromptu clients
- 3) Scope creep beyond conflict waiver



Risk Management

Strategies & Best Practices

New Business Intake

- ✓ **Stringent client evaluation/due diligence**
 - Flag and consider declining risky clients
 - Same process/rigor for lateral lawyers' clients
- ✓ **Clear engagement letters**
 - Especially client I.D., scope of rep, and fees.
 - Utilize termination language.
- ✓ **Utilize disengagement and concluding letters**
 - “I’m not your lawyer” letters for declined prospects
 - End-of-representation/matter correspondence

Preventing Conflict of Interest Claims

Conflict checking systems

Proper client I.D.

New business reports

Continuous process/supplemental checks

Identify “prior work conflicts”

Client informed consent

Avoiding Mistakes

- ✓ Attorney wellbeing (identifying/assisting impaired lawyers)
- ✓ Docketing and calendaring systems
- ✓ Periodic file reviews
- ✓ Proper supervision / staffing
- ✓ Discourage dabbling
- ✓ Use caution when utilizing documents/templates from prior matters
- ✓ Consider printing copies for review vs reviewing on screen
- ✓ Utilize checklists (e.g., closing or trial evidence/admissibility checklists)

Preventing Client Misunderstandings

- ✓ **Keep clients informed** (explain options and potential outcomes)
- ✓ **Document critical client advice and feedback**



Questions?



Contact Us

Kevin Flynn

VP– Programs | Huntersure LLC

kflynn@huntersure.com

(516) 350-0539

Andrew Ricke

VP – Law Firm Loss Prevention | Lockton Companies

Andrew.Ricke@Lockton.com

(785) 691-6441

Heather Rosing

Founding Partner | Rosing Pott & Strohbehn, LLP

hrosing@rosinglaw.com

(619) 990-5566



The Law Firm Liability Landscape

Thank You!





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Program Title	The Law Firm Liability Landscape
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External Sponsor	None
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Short Description	Current professional liability claim trends, the causes and sources of claims, and particular trouble spots.
Full Description	Law firms and lawyers today face significant professional liability and responsibility risks. Ranging from simple mistakes to conflicts of interest to the representation of unworthy clients, claims can ensnare firms of all sizes. Join our panel of experts for an insightful analysis of current professional liability claim trends, the causes and sources of claims, and particular trouble spots, as well as some best practices for risk management. Featuring Kevin Flynn (Huntersure LLC) and Heather Rosing (Rosing Pott & Strohhahn LLP). Moderated by Andrew Ricke (Lockton Companies).
Speakers	Moderator Andrew Ricke, Vice President, Lockton Companies, Chicago, IL Panelists Kevin G. Flynn, Vice President - Programs, Huntersure LLC, Garden City, NY Heather L. Rosing, Founding Partner, Rosing Pott & Strohhahn LLP, San Diego, CA Andrew Ricke, Vice President, Lockton Companies, Chicago, IL
Scholarship Policy	In accordance with MCLE requirements, the American Bar Association offers financial hardship scholarships for live, in-person and multi-session virtual event CLE programs. Apply at: http://ambar.org/cle-scholarship



BIOGRAPHY OF HEATHER L. ROSING

Founding Partner, Rosing Pott Strohhahn

hrosing@rosinglaw.com, 619-990-5566

San Diego, CA

Heather L. Rosing is a Founding Partner of Rosing Pott & Strohhahn. Ms. Rosing serves as leader in the Complex Litigation and Professional Liability Department and the Discipline Defense, Ethics, and Risk Management Department.

A Certified Specialist in Legal Malpractice Law, Ms. Rosing has developed a nationwide reputation as a skilled litigator in complex and multiparty matters, particularly those involving issues of fraud, breach of fiduciary duty, professional negligence, malicious prosecution, civil conspiracy, RICO, and aiding and abetting. Known for her strong advocacy and decades of experience in these arenas, Ms. Rosing's track record includes notable victories in State Court litigation, Federal Court litigation, and arbitration. Ms. Rosing also practices in the area of administrative law, representing a myriad of professionals before disciplinary agencies, including attorneys in proceedings with the State Bar of California and judges and commissioners in proceedings with the Commission on Judicial Performance.

In addition to her litigation practice, Ms. Rosing is a deeply experienced risk manager, providing advice to hundreds of law firms, legally related organizations, directors and officers, professional fiduciaries, accountants, and other professionals in the areas of ethics, conflict of interest, disqualification, duties to third parties, unauthorized practice of law, fee agreements, fee sharing, privileges, fiduciary duties, and professional responsibility. She previously served as General Counsel of a previous firm. Due to her depth of experience, Ms. Rosing is sought out as a consultant and expert witness in these areas, as well as on issues of law firm management.

Ms. Rosing was recognized as the #1 SuperLawyer in San Diego in 2024, and one of 18 lawyers honored as "Lawyer of the Decade" by the Daily Journal in January 2021. In 2024, she also received the California Women Lawyers' Judith Soley Lawyer as Citizen Award for her commitment to service in the arenas of diversity and gender equality. In 2021, the San Diego legal community came together at the annual Red Boudreau Trial Lawyers Dinner to recognize Ms. Rosing with the Daniel T. Broderick III Award, which honors the highest standards of civility, dedication, and professionalism in the practice of law. In 2022, she received the David H. Bartick Award for Civility and Professionalism from the United States District Court for the Southern District of California.

Ms. Rosing is the Chair of the ABA Standing Committee on Lawyers Professional Liability, which hosts the biannual National Legal Malpractice Conferences. She served as an appointed advisor to the Rules Revision Commission of the State Bar of California, which recommended wholesale revisions to the Rules of Professional Conduct (adopted in large part by the California Supreme Court in 2018), and as an appointed member of the Mandatory Insurance Working Group of the State Bar. She frequently speaks on a pro bono basis on malpractice, ethics, and risk management issues across California and the country. Ms. Rosing was also appointed to serve as the co-vice chair of the Civility Task

Force, which is a joint effort among the California Lawyers Association (CLA), the State Bar, and the California Judges Association (CJA).

In addition, Ms. Rosing is the current co-chair of the CJA's Judicial Fairness Coalition, which focuses on education about the judicial branch and the importance of judicial independence. She also served as an appointed member of the ABA Standing Committee on Specialization, which accredits specialty certification programs for lawyers in particular fields of law offered by private organizations. In 2020, when the COVID 19 pandemic disrupted the judicial system, Ms. Rosing was part of the Steering Committee of RESOLVE Law San Diego, which offered free mediations and discovery referee services to civil litigants across the county. For many years, she has also been involved in the National Association of Women Judges (NAWJ), assisting with the Success Inside and Out program at the Las Colinas Women's Facility and the NAWJ annual conferences in San Diego. She was the co-chair of the NAWJ Annual Conference Friends Committee, helping to prepare for the October 2024 NAWJ conference in San Diego.

In 2018-2019, Ms. Rosing served as the inaugural President of the CLA, the largest statewide voluntary Bar Association in the country. During her tenure, she launched the organization, focusing on its 16 Sections, the California Young Lawyers Association, governmental affairs, bar relations, and initiatives in the areas of diversity, access to justice, and civics education. Under her leadership, CLA took over the Annual Meeting, which has brought together judges, lawyers, and organizations from across the State for several days of meetings for over 80 years. Ms. Rosing was also subsequently the inaugural President of the philanthropic sister organization of CLA, the California Lawyers Foundation (CLF). CLF focuses on supporting organizations, causes, and projects related to the core CLA initiatives, including pathways programs for students across California.

Previously, she served for four years on the State Bar of California's Board of Trustees as Vice-President, Treasurer, and Chairperson of the Regulations, Admissions, and Discipline Oversight Committee. A strong advocate for judicial and legal diversity, Ms. Rosing served as President of ChangeLawyers (formerly the California Bar Foundation), which awards pipeline grants, scholarships, and fellowships across the State. Ms. Rosing has also served in leadership roles of many other organizations, including as President of the San Diego County Bar Association in 2008. During her presidency, she launched a Diversity Fellowship Program, spearheaded a civility initiative, and founded a pro bono program to assist active-duty service members.

The recipient of numerous accolades, Ms. Rosing was recognized by the Daily Journal as Top Lawyer of the Decade in 2021, as well as Top 100 Lawyers in California (2018-2024). Best Lawyers in America® has consistently recognized Ms. Rosing for many years, and honored her in both 2014 and 2022 as Lawyer of the Year in Legal Malpractice Law Defense. She has also been frequently and consistently honored by San Diego Super Lawyers (2008-2024), including Top 25 Women San Diego Super Lawyers, Top 50 San Diego Super Lawyers, and Number 1 Attorney in San Diego County. Ms. Rosing was named Woman of Influence in Law 2021 by the San Diego Business

Journal, which previously honored her as CFO of the Year (2011, 2014, 2016). In addition to the awards described earlier in this biography, Ms. Rosing is the recipient of the San Diego Law Library Foundation's Excellence in Public Service Award (2019), Fastcase 50 (2019), Earl B. Gilliam Bar Foundation's Corporate Commitment to Diversity Award (2016), Lawyer of the Year by the San Diego Defense Lawyers (2015), and the Exemplary Service Award by San Diego Volunteer Lawyer Program (2014). For her work in the Bar Association community, she received the National Conference of Bar Presidents' 2022 Fellows Award. She holds the Highest AV®-Preeminent™ Peer Review Rating by Martindale-Hubbell.

Born in the Chicago area, Ms. Rosing attended the University of Illinois and Northwestern University School of Law, where she served as President of the Student Bar Association and received the prestigious Wigmore Award. She has been licensed to practice law in California since 1996, and in Illinois since 1997.

BIOGRAPHY OF KEVIN G. FLYNN

Vice President - Programs, Huntersure LLC

Garden City, NY (516) 350-0539 kflynn@huntersure.com

Kevin Flynn is a Vice President of Huntersure, having joined the company in October of 2024. Before joining Huntersure, Kevin spent 35 years at Mendes & Mount where he was a partner, the Chair of the Professional Liability Practice Group and had served as the firm's Managing Partner. He specialized in claims against law and accounting firms as well as management consultants and had an active practice in representing reinsurers.

BIOGRAPHY OF ANDREW J. RICKE, ESQ.

Vice President, Lockton Companies

Kansas City, MO 312-669-6848 Andrew.Ricke@lockton.com

Andrew Ricke is Vice President with Lockton, the world's largest independent broker of insurance for law firms. As a key member of Lockton's Loss Prevention Team, Andrew leverages his legal experience to assist Lockton's law firm clients in identifying, avoiding, and minimizing professional liability and other threats commonly facing law firms and lawyers. Before joining Lockton, Andrew was a partner with Lathrop GPM in Kansas City, where he had a national trial practice centered on complex business/commercial, tort, and environmental litigation. He also served as his firm's Assistant General Counsel and Claims Counsel. Andrew is an active member of the ABA Center for Professional Responsibility and the Association of the Professional Responsibility Lawyers (APRL), and he serves on the Kansas Bar Association Ethics Advisory Committee.